

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JACK IN THE BOX, INC.,
Plaintiff,
v.
DEEPAK MEHTA, et al.,
Defendants.

Case No. [5:13-cv-04444 EJD](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Re: Dkt. No. 155

Presently before the court in this trademark and breach of contract action is Plaintiff Jack In The Box, Inc.'s ("JIB") Motion for Leave to File a First Amended Complaint. See Docket Item No. 155. Defendants Deepak Mehta, Kiran Mehta, Mehta Enterprises, Inc. and Deepak Enterprises, Inc. (collectively, "Defendants") have filed written opposition to the motion. See Docket Item No. 163.

Federal jurisdiction arises pursuant to 28 U.S.C. § 1331. This matter is suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for January 8, 2015, is VACATED. Having carefully considered the pleadings filed by the parties, the court finds, concludes and orders as follows:

1. Since this motion was filed after the court-imposed deadline for amendments to the pleadings (see Docket Item No. 54), JIB must initially demonstrate sufficient "good

cause” to modify the scheduling order. Johnson v. Mammoth Recreations Inc., 975 F.2d 604, 607-608 (1992). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” Id. at 609. Here, JIB was diligent under the circumstances because it filed this motion soon after two events made it clear that litigation was inevitable: (1) efforts at an informal resolution proved unsuccessful, and (2) Defendants’ motion for leave to amend its Answer was granted while JIB’s early summary judgment motion was denied. Indeed, as this court recognized in relation to Defendants’ request to amend their own pleading, making an amendment request while settlement discussions were ongoing would have been unproductive and potentially damaging to those discussions. See Docket Item No. 133. Accordingly, the court finds that JIB has satisfied its burden to demonstrate good cause under Rule 16.

2. JIB must also show that its proposed amendments are appropriate under Federal Rule of Civil Procedure 15. Although the Rule 15 standard is a liberal one, a request for leave to amend may be denied where the amendment would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay. Foman v. Davis, 371 U.S. 178, 182 (1962); Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994). The consideration of prejudice to the opposing party “carries the greatest weight.” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). Despite Defendants’ contentions to the contrary, the court is not persuaded that the minor amendments proposed by JIB are futile or sought in bad faith. Similarly, the proposed amendments will not result in undue delay since discovery has not yet closed and the court may still set trial dates at the upcoming pretrial conference. Furthermore, Defendants’ articulation of “severe” prejudice, based entirely on litigation with another party in another court, is unconvincing. Accordingly, the court finds that the proposed amendments are also acceptable under Rule 15.

Based on the foregoing, JIB's Motion for Leave to File a First Amended Complaint is GRANTED. JIB shall file the First Amended Complaint as a separate docket entry on ECF forthwith.

IT IS SO ORDERED.

Dated: January 5, 2015


EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California